

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation and Economic Development Appropriations Committee

BILL: CS/CS/CS/CS/SB 1016

INTRODUCER: Transportation and Economic Development Appropriations Committee; Judiciary Committee, Community Affairs Committee; Regulated Industries Committee; and Senator Jones

SUBJECT: Mobile Home Park Tenancies

DATE: April 6, 2010

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	RI	Fav/CS
2. Gizzi	Yeatman	CA	Fav/CS
3. Treadwell	Maclure	JU	Fav/CS
4. Noble	Noble	TA	Fav/CS
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires the Florida Housing Finance Corporation (FHFC) to use its expertise to provide technical assistance to mobile home owners working through their homeowners' association to purchase their mobile home park. This assistance includes, but is not limited to, the issuance of bonds through a not-for-profit organization exempt under the provisions of s. 501(c)(3) of the United States Internal Revenue Code and technical assistance in creating the not-for-profit organization to purchase the mobile home park upon written request of mobile home owners working through their homeowners' association.

The bill declares a legislative finding that mobile home parks are an essential element of providing affordable housing in the state.

The bill provides mobile home park homeowners' associations a right of first refusal to purchase a mobile home park in situations in which a mobile home park is subject to a change in land use. The bill also establishes certain notice procedures.

This bill substantially amends the following sections of the Florida Statutes: 420.0003, 420.502, and 723.061.

II. Present Situation:

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC),¹ is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.² It was created in 1997 when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as the corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but it is a separate budget entity not subject to the control, supervision, or direction of the DCA.³ Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.⁴

The FHFC operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate Program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership Program (SHIP), which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.⁵

Affordable housing programs are funded from documentary stamp tax revenues, part of which are distributed to both the State Housing Trust Fund and the Local Government Housing Trust Fund, and used for the various FHFC programs.

¹ Formerly the Florida Housing Finance Agency.

² The Florida Housing Finance Corporation defines affordable housing “in terms of the income of the household living in the housing. Housing is generally said to be affordable when a family is spending no more than 30 percent of its total income on housing.” *Overview of Florida Housing Finance Corporation’s Mission and Programs*, 3 (Sept. 2009) (on file with the Committee on Judiciary).

³ Section 420.504(1) and (3), F.S.

⁴ Section 420.504(3), F.S.

⁵ Florida Housing Finance Corporation, *A Summary of Florida Housing’s Programs*, available at <http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf>.

Mobile Home Act

Chapter 723, F.S., is known as the “Florida Mobile Home Act” and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (DBPR).

The Mobile Home Act (Act) was created to address the unique relationship between a mobile home owner and a mobile home park owner. The Act provides in part that:

Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.⁶

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.⁷

Eviction of Mobile Home Owner

In order to evict mobile home owners due to a change in the use of the land where the mobile home park is located, the park owner is required to give all affected tenants at least six-months written notice of the projected change in land use to provide tenants with enough time to secure other accommodations.⁸ The notice of a change in land use must be in writing, posted on the premises, and sent to the mobile home owner, tenant, or occupant by certified or registered mail.⁹ The mobile home park owner is not required to disclose the proposed land use designation for the park in the eviction notice.¹⁰

In addition to the notice required for a proposed change in land use, a park owner must provide written notice to the mobile home owner or the directors of the homeowners’ association, if one has been established, of any application for a change in zoning of the mobile home park within five days after filing for such zoning change with the zoning authority.¹¹

⁶ Section 723.004(1), F.S.; *see also* Committee on Community Affairs, Fla. Senate, *Mobile Home Relocation*, 3 (Interim Project Report 2007-106) (Oct. 2006), available at http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-106ca.pdf.

⁷ Section 723.002(1), F.S.

⁸ Section 723.061(1)(d), F.S.

⁹ Section 723.061(5), F.S.

¹⁰ *See Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 1296 (Fla. 1991) (recognizing that “the legislature did not intend to require the park owner to specify what the ‘change in use’ would be”).

¹¹ Section 723.081, F.S.

Sale of Mobile Home Park: Mobile Home Owner's Rights

A mobile home park owner who offers¹² his or her park for sale to the general public must notify¹³ the officers of the homeowners' association of the offer, asking price, and terms and conditions of sale.¹⁴ The mobile home owner's right to purchase the park must be exercised by and through the mobile homeowners' association created pursuant to ss. 723.075-723.079, F.S.

The mobile homeowners' association must be given 45 days from the date the notice is mailed, to execute a contract with the park owner that meets the price and terms and conditions, as set forth in the notice. If the homeowners' association and the park owner fail to execute a contract within those 45 days, the park owner has no further obligation, unless he or she subsequently agrees to accept a lower price.¹⁵ However, if the park owner agrees to sell the park at a lower price than specified in the notice to the homeowners' association, then the homeowners' association will have an additional 10 days to meet the price and terms and conditions.¹⁶

The mobile home park owner is also required to notify the homeowners' association of any unsolicited bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to, and allow the homeowners' association to purchase the park under the price and terms and conditions of the bona fide offer to purchase.¹⁷ Although the park owner must consider subsequent offers by the homeowners' association, he or she is free to execute a contract to sell the park to a party other than the association at any time.¹⁸

Florida Mobile Home Relocation Corporation

In 2001, the Legislature created the Mobile Home Relocation Program in response to concerns associated with the closure of mobile home parks.¹⁹ The program was implemented with the support of the Florida Manufactured Housing Association and the Federation of Manufactured Home Owners of Florida.²⁰

Moving Expenses Available to Mobile Home Owners

The Florida Mobile Home Relocation Corporation (corporation) is a public corporation that governs the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park.²¹ Under current law, a displaced mobile home owner is entitled to certain relocation expenses paid by the corporation.²² The amount of payment includes the lesser of the actual moving expenses of relocating the mobile home to a

¹² Section 723.071(3)(b), F.S., defines the term "offer" to mean any solicitation by the park owner to the general public.

¹³ Section 723.071(3)(a), F.S., defines the term "notify" to mean the placing of a notice in U.S. mail addressed to the officers of the homeowners' association. The notice is deemed to have been given upon the mailing.

¹⁴ Section 723.071(1)(a), F.S.

¹⁵ Section 723.071(1)(b), F.S.

¹⁶ Section 723.071(1)(c), F.S.

¹⁷ Section 723.071(2), F.S.

¹⁸ *Id.*

¹⁹ Chapter 2001-227, Laws of Fla.

²⁰ See ss. 723.0611-723.0612, F.S.

²¹ Section 723.0611, F.S.

²² Section 723.0611, F.S.

new location within a 50-mile radius of the vacated park, or \$3,000 for a single-section mobile home and \$6,000 for a multi-section mobile home. Moving expenses incorporate the cost of taking down, moving, and setting up the mobile home in a new location.²³

In order to obtain payment for moving expenses, the mobile home owner must submit an application for payment to the corporation along with a copy of the notice of a change in use and a contract with a moving company for relocating the mobile home.²⁴ If the corporation does not approve payment within 45 days of receipt, it is deemed approved. Upon approval, the corporation issues a voucher in the amount of the contract price to relocate the mobile home, which the moving contractor may redeem upon completion of the move and approval of the relocation by the mobile home owner.²⁵

Once a mobile home owner's application for funding has been approved by the corporation, he or she is barred from filing a claim or cause of action under ch. 723, F.S., directly relating to or arising from the proposed change in land use of the mobile home park against the corporation, the park owner, or the park owner's successors in interest.²⁶ Likewise, the corporation may not approve an application for funding if the applicant has either:

- Filed a claim or cause of action;
- Is actively pursuing such claim or cause of action; or
- Has a judgment against the corporation, park owner, or the park owner's successors in interest – unless the claim or cause of action is dismissed with prejudice.²⁷

In lieu of collecting moving expenses from the corporation, a mobile home owner can elect to abandon the home and collect payment from the corporation in the amount of \$1,375 for a single section mobile home or \$2,750 for a multi-section mobile home. If the mobile home owner chooses to abandon the mobile home, he or she must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.²⁸

Payments to the Florida Mobile Home Relocation Corporation²⁹

A mobile home park owner is required to contribute \$2,750 per single-section mobile home and \$3,750 per multi-section mobile home to the corporation for each application that is submitted for moving expenses due to a change in land use.³⁰ These payments must be made within 30 days after receipt of the invoice from the corporation, and they are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S.³¹

²³ Section 723.0612(1), F.S.

²⁴ Section 723.0612(3), F.S.

²⁵ Section 723.0612(3)-(4), F.S.

²⁶ Section 723.0612(9), F.S.

²⁷ *Id.*

²⁸ Section 723.0612(7), F.S.

²⁹ Payments made to the corporation are deposited into the Florida Mobile Home Relocation Trust Fund under s. 723.06115, F.S., to be used by the Department of Business and Professional Regulation to carry on the purposes of the corporation.

³⁰ Section 723.06116(1), F.S.

³¹ *Id.*

The mobile home park owner is not required to make payments, nor is the mobile home owner entitled to compensation, if:

- The mobile home owner is moved to another location in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the park owner, prior to the notice of a change in land use, that he or she was vacating the premises;
- The mobile home owner abandoned the mobile home, as stated in s. 723.0612(7), F.S.; or
- The mobile home owner had an eviction action filed against him or her for nonpayment of the lot rental amount under s. 723.061(1)(a), F.S., prior to the date that the notice of a change in land use was mailed.³²

In addition to the above payments, the Florida Mobile Home Relocation Trust Fund receives revenue from mobile home park owners through a \$1 annual surcharge levied on the annual fee the park owners remit to the Department of Business and Professional Regulation for each lot they own within the mobile home park. Mobile home owners also contribute to the trust fund through a \$1 annual surcharge on the decal fee remitted to the Department of Highway Safety and Motor Vehicles.³³

III. Effect of Proposed Changes:

Florida Housing Finance Corporation

The bill creates s. 420.0003(4)(e), F.S., to require the Florida Housing Finance Corporation to provide technical assistance to mobile home owners working through their homeowners' association, which is formed and operating pursuant to ss. 723.075-723.079, F.S., to purchase their mobile home park. This assistance includes, but is not limited to, the issuance of bonds through a not-for-profit organization exempt under the provisions of s. 501(c)(3) of the United States Internal Revenue Code and technical assistance in creating the not-for-profit organization to purchase their mobile home upon written request of mobile home owners working through their homeowners' association.

The bill also creates s. 420.502(9), F.S., to provide a Legislative finding that mobile home parks are an essential element of providing affordable housing in the state.

Mobile Home Owners' Right to Purchase Mobile Home Park

The bill amends s. 723.061(1)(d), F.S., to provide mobile home owners, by and through their homeowners' association, with a process to purchase a mobile home park if they are being evicted from the park due to a change in land use.

The bill requires mobile home park owners to follow newly adopted procedures, similar to those used for the sale of a mobile home park under s. 723.071, F.S.,³⁴ prior to evicting mobile home

³² Section 723.06116(2), F.S.

³³ Section 723.06115(1), F.S.

³⁴ Section 723.071, F.S., provides procedures for the notification and offer to a mobile homeowners' association when a park owner desires to sell the mobile home park.

owners due to a change in land use.

The bill requires the park owner to provide written notice to the officers of the homeowners' association of the right to purchase the mobile home park at the price and terms and conditions set forth in the notice.

The bill gives the homeowners' association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the written notice was mailed. The contract must be for the same price and terms and conditions set forth in the notice, which may also require the purchase of other real estate that is contiguous or adjacent to the mobile home park.

If the park owner and the homeowners' association do not execute a contract within 45 days, the park owner is no longer obligated to comply with the process in s. 723.061(1)(d), F.S., and may proceed with the eviction. However, if the park owner elects to offer or sell the park at a price less than the price specified in the written notice to the homeowners' association, then the homeowners' association has an additional 10 days to meet the revised price and terms and conditions.

Although the bill implies that the park owner would be required to provide the homeowners' association with some form of notice that the price has been reduced, there is no actual requirement that the park owner provide notice. Because no notice is required, it is unclear when the 10-day period to meet the revised price begins. If it is the intent of the Legislature that actual written notice of a reduced price be provided to the homeowners' association, the Legislature could include this requirement and specify that the homeowners' association would have 10 days from the receipt of notice of the reduced price to purchase the park.

The bill creates s. 723.061(1)(d)1.c., F.S., to clarify that the park owner has no obligation under ss. 723.061(1)(d) and 723.071, F.S., to provide any further notice to, or to negotiate with, the homeowners' association for the sale of the mobile home park after six months from the date of mailing the initial notice.

The bill requires the park owner to provide affected mobile home owners with at least six-months notice of an eviction due to a projected change in land use. The bill creates s. 723.061(1)(d) 2.a., F.S., to state that a notice of eviction due to a change in land use may be given to affected mobile home owners at the same time as or after the notice of a right to purchase is provided to the homeowners' association.

The bill deletes subsection (3) of s. 723.061, F.S. Currently, this subsection provides that the provisions of 723.083, F.S.,³⁵ do not apply to any park where the provisions of "this subsection" apply. There are no provisions governing parks under the subsection. Prior to amendment in 2001, this provision was included in a paragraph within subsection (2) of 723.061, F.S.³⁶ The

³⁵ Section 723.083, F.S., provides that no agency of municipal, local, county, or state government may approve any application for rezoning, or take other action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

³⁶ Chapter 2001-227, s. 6, Laws of Fla.

provisions in subsection (2) were deleted in 2001.³⁷ Therefore, the language in subsection (3) appears to have been mistakenly preserved after the 2001 amendment. However, courts have interpreted this provision as precluding the application of s. 723.083, F.S., when a mobile home park owner gives notice under s. 723.061, F.S.³⁸ Therefore, the bill makes it clear that the provisions of s. 723.083, F.S., requiring the government to consider the adequacy of parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

The bill amends s. 723.061(4), F.S., to exempt the notice provided to officers of the homeowners' association under s. 723.061(1)(d)1., F.S., from the notice requirements provided under s. 723.061(4), F.S. The notice requirements under s. 723.061(4), F.S., require that the notice be posted on the premises, and sent and addressed to the mobile home owner, tenant, or occupant by certified or registered mail, return receipt requested at his or her last known address.

Effective Date

The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

See the "Effect of Proposed Changes" section of this bill analysis for a discussion of the rights of mobile home owners and the responsibilities for mobile home park owners created by the bill, which may affect them financially through the purchase and sale of property in a mobile home park.

³⁷ *Id.*

³⁸ *DeFalco v. City of Hallandale Beach*, 18 So. 3d 1126, 1128 (Fla. DCA 2009).

C. Government Sector Impact:

The Florida Housing Finance Corporation reports that the fiscal impact associated with the corporation providing technical assistance to mobile home park owners is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS/CS by Transportation and Economic Development Appropriations on April 5, 2010:

The committee substitute ensures that relative to provisions of s. 723.061, F.S., the mobile home owners and mobile home tenants are each given notice of eviction and conforms to the House bill.

CS/CS/CS by Judiciary on March 18, 2010:

The committee substitute deletes a provision from current law (s. 723.061(3), F.S.), to make it clear that the provisions of s. 723.083, F.S., requiring the government to consider the adequacy of mobile home parks for relocation, apply when a mobile home park owner gives notice under s. 723.061, F.S.

CS/CS by Community Affairs on February 16, 2010:

The committee substitute to the committee substitute clarifies that the Florida Housing Finance Corporation shall use its expertise to provide *technical* assistance to mobile home owners working through their homeowners' association formed and operating pursuant to ss. 723.075-723.079, F.S., to purchase their mobile home park.

CS by Regulated Industries on February 2, 2010:

The committee substitute (CS) corrects a scrivener's error in s. 723.061(1)(d)1., F.S., by changing the term "their" to "its" in regard to the homeowners' association's right to purchase the mobile home park.

The CS does not amend s. 723.061(3), F.S., to prohibit the application of s. 723.083, F.S., to the provisions of s. 723.061(1)(d), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
